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February 18, 2011

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Christopher Hughey, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 6443 (Americans For Common Sense Solutions)

Dear Mr. Hughey,

This Response is submitted by the undersigned counsel on behalf of Americans for Common Sense Solutions ("ACSS" or "Respondent"), in response to the Complaint designated as Matter Under Review 6443. AFCSS received notification from the Commission of the Complaint filed in this matter on December 23, 2010. The undersigned counsel requested a thirty-day extension of time to respond, or until February 5, 2011. This request was granted by letter dated January 5, 2011. Subsequently, we were granted an additional fifteen-day extension of time to respond, or until February 21, 2011.

The Complainant in this matter alleges that ACSS did not file certain electioneering communications reports referencing David Cicilline. The specific advertisements referenced by Complainant are not clearly identified, and Respondent was not provided a copy of the "Exhibit" referenced in the Complaint. (A CD-ROM was provided to the Respondent, but it was blank.)

This inadequate notice notwithstanding, ACSS has reviewed its activities and acknowledged its failure to file five electioneering communications reports. ACSS's failure to file was inadvertent, and has been corrected. ACSS's electioneering communications reports were submitted electronically to the Commission on February 15, 2011, and are now available online at <http://query.nictara.com/cgi-bin/fecimg/?C30001903>.

ACSS is an unincorporated association. It was created by its Executive Director, Christopher Stenberg, and another individual. The organization produced three television ads and one radio ad in connection with two Congressional races. (The organization also sponsored an automated telephone call.) The Complaint references only three communications, all distributed in Rhode Island. ACSS also distributed two television communications in California, and includes these communications in this response as a demonstration of its commitment to complying with all applicable laws.

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To fund its effort, the group raised a total of \$266,201 and spent \$194,719.57 between October 1, 2010, and December 31, 2010. See Form 8872 reports, available online at the Internal Revenue Service's website.¹ The communications that ACSS produced raised questions about the policy preferences and legislative records of David Chirba (Rhode Island) and Lois Capps (California). Both won their elections in November 2010.

The founders and operators of ACSS properly registered the organization with the Internal Revenue Service as a Section 527 political organization, filing Forms 8871 and 8872 as appropriate. See Affidavit of Christopher Stenberg at ¶¶ 2-3, 7. The organization conducted itself so as to avoid Federal Election Commission (FEC) "political committee" status, and believed – in good faith – that this relieved it of FEC reporting requirements. See *id.* at ¶¶ 4-8. Prior to receipt of this Complaint the organization was unaware that it had incurred electioneering communication reporting requirements.

The founders and operators of ACSS had not previously produced or distributed advertising in connection with federal elections prior to this effort. For individuals without prior experience in FEC-related matters, it is not at all self-evident that an organization that files regular reports with the IRS, and not with the FEC, would nevertheless still be required to file largely duplicative spending reports with the FEC. Without diving deep into the FEC's website, and having knowledge of its terms of art, persons unfamiliar with FEC regulations would be hard pressed to know anything about "electioneering communications."

Someone who is not a campaign finance attorney, and who is not familiar with the term "electioneering communication," cannot reasonably be expected to find the disclosure requirements on the FEC's website. From the home page, it takes three "clicks" to arrive at an overview of "electioneering communications." One must first click on the link "Help with Reporting and Compliance," on the left hand column of the FEC's homepage. From there, one must click on "Publications." Then, "Brochures and Articles." Then, scroll down to "Electioneering Communications." Finally, you will get to a subsection titled "527 Organizations." As of February 10, 2011, this section read, in part: "Unincorporated, unregistered '527' organizations may also make electioneering communications, subject to the disclosure requirements and the prohibition against corporate and labor funds." Part of this sentence is obviously incorrect and in need of revision. More importantly, however, assuming one even got this far, one could very easily read the phrase "unregistered '527' organizations" to refer to a Section 527 organization that is not registered at all, with either the IRS or the FEC. It is not readily apparent that this phrase means "not registered with the FEC."

In short, the needed information is not easy to find, and if it is found, the language used is imprecise and unclear. The Supreme Court asserted in *Citizens United* that "The First Amendment does not permit laws that force speakers to retain a campaign finance attorney...." While the electioneering communication disclosure requirements apparently pass muster under this standard, if one cannot find those requirements, their supposed simplicity is a moot point.

¹ See

<http://www.irs.gov/policy/organizations/section527/section527action?psid=35000§ionName=Americans+for+Common+Sense+Solutions>.

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The FEC provides plenty of guidance for entities that are already a part of its world. The book-length campaign guides that are produced for candidates, parties, PACs, corporations and labor unions are invaluable. There is no campaign guide, however, for an organization like ACSS. The FEC does not produce any guidance for ordinary citizens that is easily accessible and understandable.

Upon receipt of the Complaint filed in this matter, ACSS acted to remedy any violations that may have occurred. In the Complaint, it is noted that "[o]ne cannot know the reason for this nondisclosure." Complainant's counsel then proposes that ACSS acted to "deprive[]" voters of information about false advertisements that are plainly contrived to damage Mr. Cicilline's reputation on the eve of his election to Congress." One cannot know the reason for this reckless and unsubstantiated speculation. Nevertheless, to the extent that Complainant suggests that ACSS acted in willful disregard of Commission reporting requirements, those suggestions are entirely incorrect.

ACSS respectfully suggests that this matter is ripe for dismissal. The Respondents have not previously appeared before the Commission. Respondents made attempts to comply with applicable regulations and requirements, and any violations that occurred were unintentional. Respondent's communications did not materially affect the outcome of either election (RI-1 or CA-23). All required reports have now been filed, admittedly late, but ACSS is now aware that electioneering communications reports must be filed even by entities not required to be registered with the Commission. If the Commission does not agree that dismissal is appropriate, ACSS is open to conciliation and settlement, either through the Alternative Dispute Resolution program, or through the regular enforcement process.

Sincerely,



Thomas J. Josefiak

Michael Bayes

Counsel to Americans For Common Sense
Solutions